Adam Lee Shiong Lim v Mahkamah Rayuan Syariah Wilayah Persekutuan & Ors

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO WA-25–78–02 OF 2022
WAN AHMAD FARID J
11 DECEMBER 2023

Islamic Law — Renunciation of Islam — Jurisdiction of Syariah Court — Whether issue of whether one was no longer a Muslim (ie, a renunciation case) was a matter solely justiciable by the Syariah Court — Whether once Syariah Court had determined that a person was a Muslim, the Civil Court had no power of judicial review to reverse, depart from, re-litigate, unravel or go behind that determination

The applicant converted to Islam at the premises of the third respondent ('R3') before marrying a Muslim woman. The marriage ended in a divorce. The applicant then applied to the Kuala Lumpur Syariah High Court (the second respondent herein or 'R2') for a declaration that he was no longer a Muslim. The application was directed at the third respondent ('R3') where the applicant's conversion was duly registered by the Registrar of Muallafs. R2 dismissed the applicant's claim and allowed R3's counterclaim requiring the applicant to attend Akidah counselling. The Kuala Lumpur Syariah Court of Appeal (the first respondent herein or 'R1') affirmed R2's decision and dismissed the applicant's appeal. The applicant filed the instant judicial review ('JR') application for a declaration that R1's and R2's decisions were unlawful, illegal and void as the Syariah Court did not have the jurisdiction or power to declare that a person was no longer a Muslim. The applicant contended that the Syariah Court could not interfere with his constitutional right to practise the religion of his choice.

Held, dismissing the JR application:

(1) The applicant, in his affidavit in support, affirmed that he converted to Islam solely to marry his former wife so that they could live together as husband and wife. In short, he did not deny that he had professed the religion of Islam. He only sought to renounce it since he no longer professed the religion. The applicant therefore came within the ambit of 'no longer professes the religion of Islam' instead of one who 'never professed the religion'. The Federal Court in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181 held that the former was a renunciation case which was justiciable only before the Syariah Court whilst the latter, which involved the issue of one's identity and legal

A status, fell within the jurisdiction of the Civil Court (see paras 35 & 37–38).

(2) In *Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal* [2023] 2 MLJ 897, the Court of Appeal held, by majority, that B where the Syariah Court had already determined that an applicant was a Muslim, like in the instant case, the distinction drawn in *Rosliza* must necessarily be construed and answered as a renunciation case. It was held in that case that the Civil Court had no power of judicial review over the Syariah Court, let alone to reverse, depart from or in any manner C re-litigate or unravel or go behind the decision of the Syariah Court on the issue of renunciation. This court was bound by stare decisis to follow the decision in *Dahlia Dhaima* (see paras 39–40 & 43).

(3) The decisions of the Syariah Courts in the instant case on the issue of D renunciation were purely and simply non-justiciable by the Civil Courts, notwithstanding the fact that such decisions were tainted with anisminic error or *Wednesbury* unreasonableness. Accordingly, the JR application had to be dismissed (see paras 44–45).

E **[Bahasa Malaysia summary**

Pemohon memeluk agama Islam di premis responden ketiga ('R3') sebelum berkahwin dengan seorang wanita Islam. Perkahwinan itu berakhir dengan perceraian. Pemohon kemudian memohon kepada Mahkamah Tinggi Syariah Kuala Lumpur (responden kedua atau 'R2') untuk mendapatkan perisytiharan F bahawa beliau bukan lagi seorang Islam. Permohonan itu ditujukan kepada responden ketiga ('R3') di mana penukaran pemohon telah didaftarkan dengan sewajarnya oleh Pendaftar Muallaf. R2 menolak tuntutan pemohon dan membenarkan tuntutan balas R3 yang memerlukan pemohon menghadiri kaunseling Akidah. Mahkamah Rayuan Syariah Kuala Lumpur (responden G pertama atau 'R1') mengesahkan keputusan R2 dan menolak rayuan pemohon. Pemohon memfailkan permohonan semakan kehakiman ini ('SK') untuk mendapatkan perisytiharan bahawa keputusan R1 dan R2 adalah salah, tidak sah dan terbatal kerana Mahkamah Syariah tidak mempunyai bidang kuasa untuk mengisytiharkan bahawa seseorang itu bukan lagi seorang Islam. H Pemohon menghujahkan bahawa Mahkamah Syariah tidak boleh mencampuri hak perlembagaannya untuk mengamalkan agama pilihannya.

Diputuskan, menolak permohonan SK:

I (1) Pemohon dalam afidavit sokongannya mengesahkan bahawa dia memeluk Islam hanya untuk mengahwini bekas isterinya supaya mereka boleh hidup bersama sebagai suami isteri. Ringkasnya, beliau tidak menafikan bahawa beliau telah menganut agama Islam. Dia hanya cuba untuk keluar dari agama kerana dia tidak lagi menganut agama itu. Oleh itu, pemohon 'tidak lagi menganut agama Islam' dan bukannya orang

yang 'tidak pernah menganut agama tersebut'. Mahkamah Persekutuan di dalam kes*Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181 memutuskan bahawa frasa pertama adalah kes keluar dari agama yang hanya boleh dibicarakan di hadapan Mahkamah Syariah manakala frasa kedua, yang melibatkan isu identiti dan status undang-undang seseorang berada dalam bidang kuasa Mahkamah Sivil (lihat perenggan 35 & 37–38).

(2) Dalam *Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal* [2023] 2 MLJ 897, Mahkamah Rayuan berpendapat, secara majoriti, bahawa di mana Mahkamah Syariah telah memutuskan bahawa pemohon adalah seorang Muslim, seperti dalam kes ini, perbezaan yang dibuat dalam *Rosliza* seharusnya ditafsirkan dan dijawab sebagai kes murtad. Dalam kes itu, Mahkamah Sivil tidak mempunyai kuasa semakan kehakiman ke atas Mahkamah Syariah, apatah lagi untuk membalikkan, meninggalkan atau dengan apa-apa cara membicarakan semula atau membongkar atau mengenepikan keputusan Mahkamah Syariah berhubung isu murtad tersebut. Mahkamah ini terikat dengan stare decisis untuk mengikuti keputusan dalam kes *Dahlia Dhaima* (lihat perenggan 39–40 & 43).

(3) Keputusan Mahkamah Syariah dalam kes ini mengenai isu murtad adalah tidak wajar dibicarakan oleh Mahkamah Sivil, walaupun terdapat fakta bahawa keputusan tersebut mempunyai kesilapan prinsip kesalahan anisminic atau tidak munasabah *Wednesbury*. Oleh itu, permohonan SK terpaksa ditolak (lihat perenggan 44–45).]

Cases referred to

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545, FC (refd)

Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another appeal [2021] 1 MLJ 120, CA (refd)

Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101, FC (refd)

Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain [2007] 4 MLJ 585, FC (refd)

Majlis Agama Islam Pulau Pinang lwn Siti Fatimah Tan Abdullah [2009] 1 CLJ (SYA) 162 (refd)

Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal [2023] 2 MLJ 897; [2023] 2 CLJ 513, CA (folld)

Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 181; [2021] 3 CLJ 301, FC (refd)

S Selvaraja a/l T Singarathevar v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1997] MLJU 476; [1997] 2 CLJ Supp 275, HC (refd)

SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener) [2022] 2 MLJ 356, FC (refd)

A *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489, FC (refd)
Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals [2008] 2 MLJ 147, FC (refd)
Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor [1999] 2 MLJ 241, FC (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 ss 46(2)(b), 85, 89
Federal Constitution arts 5, 8, 11, 11(1), 12(3), 121(1A)
Syariah Court Evidence (Federal Territories) Act 1997 ss 17, 78

Fahri Azzat (with Iqbal Harith Liang bin Danial Liang and Ameerul Aizat) (Fahri, Azzat & Co) for the applicant.
Ahmad Hanir bin Hambaly @ Arwi (with Liyana bt Muhammad Fuad and Imitiyaz Wizni) (Federal Counsel, Attorney General's Chambers) for the first, second and fourth respondents.
Kamaruzaman Arif (with Sofiah Omar and Muhammad Izzat bin Dzulkafli) (Kamaruzaman Arif & Sofiah) for the third respondent.

Wan Ahmad Farid J:

THE FACTUAL BACKGROUND

[1] The applicant converted to Islam on 26 July 2010 at the Majlis Agama Islam Wilayah Persekutuan ('MAIWP'), the third respondent herein. His conversion was duly registered by the Registrar of Muallafs of the third respondent. After his conversion, the applicant married Hayati binti Jamalul ('Hayati') on 14 October 2010.

[2] Unfortunately, the marriage did not last. It ended up in a divorce. The divorce was recorded by the Kuala Lumpur Syariah Subordinate Court on 17 September 2015 by a single *talaq rajie.*

[3] On 9 November 20218, the applicant commenced a proceeding at the Kuala Lumpur Syariah High Court, the second respondent herein, against the third respondent, *inter alia,* for a declaratory order that the applicant is no longer a Muslim.

[4] On 19 October 2020, the Kuala Lumpur Syariah High Court ('KL Syariah High Court') dismissed the applicant's claim. The KL Syariah High Court also allowed the third respondent's counterclaim which required the applicant to attend *Akidah Counselling* ('the KL Syariah High Court order').

[5] The KL Syariah High Court order states, inter alia, as follows:

(a) mahkamah menolak tuntutan ini;

(b) plaintif hendaklah menghadiri kelas bimbingan akidah yang dianjurkan oleh Majlis Agama Islam Wilayah Persekutuan (MAIWP); and

(c) MAIWP hendaklah memberi bimbingan akidah dan bantuan termasuk bantuan kebajikan kepada plaintif.

[6] Aggrieved, the applicant filed an appeal to the Kuala Lumpur Syariah Court of Appeal ('the KL Syariah Court of Appeal'), the first respondent herein. The KL Syariah Court of Appeal dismissed the applicant's appeal on 29 November 2021And affirmed the KL Syariah High Court order ('the KL Syariah Court of Appeal order').

THE JUDICIAL REVIEW

[7] Aggrieved by the decision of the KL Syariah High Court and the dismissal of his appeal to the KL Syariah Court of Appeal the applicant commenced this judicial review application against all the respondents, inter alia, for a declaration that the KL Syariah High Court order and the KL Syariah Court of Appeal order (collectively referred to as 'the KL Syariah Court orders') are unlawful and illegal and therefore void.

[8] The applicant also seeks a declaration the KL Syariah High Court and the KL Syariah Court of Appeal do not have the jurisdiction or power to declare that a person is no longer a Muslim. Further, the applicant seeks a declaratory order that the KL Syariah High Court and the KL Syariah Court of Appeal have no jurisdiction over the third respondent, MAIWP.

[9] Leave to commence this judicial review application was granted by this court on 2 March 2022.

[10] The application for judicial review is supported by the affidavit of the applicant in encl 4 ('AIS4').

[11] The grounds of the applicant's application can be summarised as follows:

(a) the KL Syariah High Court and the KL Syariah Court of Appeal (collectively referred to as the 'KL Syariah Courts') do not have jurisdiction over applications to renounce Islam. In short, by issuing the KL Syariah Court orders, the KL Syariah Courts have acted in excess of their jurisdiction;

(b) the KL Syariah Court orders are violative of the applicant's right to religion;

(c) the applicant falls out of the jurisdiction of the KL Syariah Courts the moment he declares that he has ceased to be a Muslim;

(d) the KL Syariah Courts have no jurisdiction over corporate entities such as MAIWP;

(e) the KL Syariah Courts have no power to interpret the Federal Constitution, in particular art 11 thereof; and

(f) the KL Syariah Court orders were made contrary to ss 17, 78 and other relevant provisions of the Syariah Court Evidence (Federal Territories) Act 1997 ('the EA 1997').

THE LEGALITY OF THE ORDERS: THE KL SYARIAH COURTS LACK JURISDICTION

[12] Learned counsel for the applicant first attracted me to the judgment of the Federal Court in *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 1 MLJ 489 (FC). In that case, the appellant — who was brought up as a Sikh — converted to Islam while he was still a minor. Upon reaching 21 years of age, he went through a baptism ceremony into the Sikh faith, thereby renouncing Islam. He then executed a deed poll in which he declared unequivocally that he was a Sikh. Subsequently, he filed an originating summons in the Kuala Lumpur High Court seeking a declaration that he was no longer a Muslim. The Jabatan Agama Islam Kedah raised a preliminary objection against the application, contending that the High Court had no jurisdiction as the matter came under the jurisdiction of the Syariah Courts. The learned High Court judge upheld the objection and dismissed the application. The appellant appealed to the Federal Court.

[13] At the Federal Court, it was held that the jurisdiction of the Syariah courts to deal with conversions out of Islam, although not expressly provided for in some State Enactments, can be read into those enactments by implication derived from the provisions concerning conversion into Islam. It is inevitable that since matters of conversion to Islam come under the jurisdiction of the Syariah courts, by implication, conversion out of Islam should also fall under the jurisdiction of the same courts.

[14] The Federal Court then held that the appellant's application for a declaration that he was no longer a Muslim came within the jurisdiction of the Syariah court and not that of the High Court.

[15] Learned counsel for the applicant took exception in the manner in which the Federal Court arrived at its decision. He pulled no punches in submitting the *Soon Singh* was made per incuriam. The long and short of learned counsel's argument is that the jurisdiction of the KL Syariah Courts cannot be derived by implication since it contravenes the *casus omissus* principle. It simply means that a court will not supply a legislative omission, for doing so is a legislative, and not a judicial function.

[16] According to learned counsel, s 85 of the Administration of Islamic Law (Federal Territories) Act 1993 ('the AILA') deals with the requirement of the conversion. Section 89 of the same only requires the Registrar of Muallafs to be satisfied that a *muallaf* had converted in accordance with the requirements under s 85 before he could register the conversion into the register.

[17] Learned counsel submitted that there is no statutory requirement for the Syariah Court to endorse the conversion and eventual registration under the AILA.

[18] Learned counsel highlighted the purported flaw in *Soon Singh* and derived his argument from the dissenting judgment of Abdul Aziz Mohamad FCJ in *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147 (FC). His Lordship was of the view that conversion to Islam under the AILA is not a judicial matter within the jurisdiction of the Syariah Courts but an administrative matter involving only the Registrar of Muallafs.

[19] In extending his argument, learned counsel submitted that if the conversion to Islam under the AILA can only be registered by the Registrar of Muallafs, then, by implication, its renunciation should only be administered by the Registrar. In short, according to learned counsel, it is erroneous to vest the determination of conversion or even renunciation to the Syariah Courts.

[20] In any event, learned counsel contended that jurisdiction cannot be derived by implication. My attention was then drawn to s 46(2)(b) of the AILA, which confers jurisdiction to the Syariah Courts. It states that a Syariah High Court shall:

> (b) In its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to —
>
> (i) betrothal, marriage, ruju', divorce, nullity of marriage (*fasakh*), *nusyuz*, or judicial separation (*faraq*) or other matters relating to the relationship between husband and wife;
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> (ii) any disposition of, or claim to, property arising out of any of the matters set out in subparagraph (i):

(iii) the maintenance of dependants, legitimacy, or guardianship or custody (*hadhanah*) of infants;

(iv) the division of, or claims to, harta sepencarian;

(v) wills or death-bed gifts (*marad-al-maut*) of a deceased Muslim;

(vi) gifts inter vivos, or settlements made without adequate consideration in money or money's worth, by a Muslim;

(vii) *wakaf* or *nazr*;

(viii) division and inheritance of testate or intestate property;

(ix) the determination of the persons entitled to share in the estate of a deceased Muslim or of the shares to which such persons are respectively entitled; or

(x) other matters in respect of which jurisdiction is conferred by any written law.

[21] Learned counsel then highlighted to me that there is nothing in s 46(2)(b) of the AILA, which states that the subject matters that a Syariah High Court shall have civil jurisdiction over, omits the matter of conversions out of Islam.

[22] In coming to the said proposition, learned counsel cited the judgment of Abdul Hamid Mohamad Chief Juctice in *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101 (FC). In delivering the judgment of the Federal Court, the learned former Chief Justice held as follows:

> The point to note here is that both courts, civil and syariah, are creatures of statutes. Both owe their existence to statutes, the Federal Constitution, the Acts of Parliament and the State Enactments. Both get their jurisdictions from statutes ie Constitution, federal law or State law, as the case may be. So, it is to the relevant statutes that they should look to determine whether they have jurisdiction or not.

[23] Based on the aforesaid proposition, learned counsel for the applicant submitted that the Federal Court in *Latifah bte Mat Zin* had rejected the notion of jurisdiction by implication as suggested in both *Soon Singh* and *Lina Joy lwn Majlis Agama Islam Wilayah Persekutuan dan lain-lain* [2007] 4 MLJ 585 (FC).

[24] The extension of the said proposition is this. According to learned counsel, the absence of any express stipulation within AILA that the Syariah Courts have jurisdiction over applications to renounce Islam, it is not up to the Courts to supply that omission. In *Latifah bte Mat Zin,* the Federal Court further held that the function of the court is to apply the law, not make or to amend law not made by the Legislature. Knowing the inadequacy of the law, it

is for the Legislature to remedy it, either by amendment or by making new laws.

[25] In short, learned counsel submitted that the line of authorities is against the courts supplying *casus omissus.* In reiterating that *Soon Singh* was decided *per incuriam,* learned counsel contended that by arriving at the conclusion the jurisdiction can be derived by implication, the Federal Court had attempted to supply *casus omissus.*

[26] There is another aspect of the grounds of judgment of the first respondent in dismissing the applicant's appeal on 29 November 2021, which learned counsel has highlighted. It is this. According to learned counsel, the KL Syariah Court of Appeal, in its decision, conceded that it did not have the power to allow an applicant to renounce Islam.

[27] In para [16] of the grounds, the KL Syariah Court of Appeal remarked as follows:

> [16] Berdasarkan kes di atas, kami tegaskan bahawa soalan penentuan sama ada seseorang itu Islam atau tidak adalah di bawah bidang kuasa Mahkamah Syariah tetapi *itu bukan bermakna* Mahkamah Syariah mempunyai kuasa untuk membenarkan seseorang keluar dari agama Islam.

The same position was taken by the learned judge at the KL Syariah High Court in dismissing the applicant's application to renounce Islam. The learned Syariah judge referred to the judgment of the Pulau Pinang Syariah Appeal Court in *Majlis Agama Islam Pulau Pinang lwn Siti Fatimah Tan Abdullah* [2009] 1 CLJ (SYA) 162 (MRS). In essence, the Syariah Appeal Court held that clothing the Syariah Court with jurisdiction to grant leave to anyone to abandon the religion of Islam is abhorrent and repugnant to the principles of *Hukum Syarak.*

THE STATUS OF THE APPLICANT'S RELIGION

[28] Learned counsel for the applicant submitted that the Syariah Court orders are violative of the applicant's right to profess his chosen religion as guaranteed under art 11(1) of the Federal Constitution. My attention was then drawn to the judgment of the Court of Appeal in *Ketua Pegawai Penguatkuasa Agama & Ors v Maqsood Ahmad & Ors and another appeal* [2021] 1 MLJ 120 (CA). The Court of Appeal held that the freedom of religion is absolute and non-derogable save for the express limitations that the Federal Constitution itself allows.

[29] It is, therefore, the contention of learned counsel that the first and second respondents' denial of the applicant's right to renounce Islam is contrary to the pronouncement of the Court of Appeal in *Maqsood Ahmad.* In any event, the refusal of the Syariah Courts to assume jurisdiction on the ground that it transgressed the *Hukum Syarak* had led to a situation of absurdity. This would effectively put the applicant in a remediless situation — since he could go neither here nor there.

[30] Learned counsel further submitted that any person who declares that he has ceased to believe in Islam by rejecting the *syahadah* and that he has subscribed to a different faith should be regarded as beyond the pale of Islam.

[31] According to learned counsel, the Syariah Courts may only exercise jurisdiction on a 'person professing the religion of Islam' within the meaning of the State List of the Federal Constitution. The extension of the argument is that since the applicant, in this case, changed his faith from Islam to Christianity, he shall therefore cease to be a 'person professing the religion of Islam'.

THE BASIS OF THE ILLEGALITY OF THE SYARIAH COURTS ORDERS

[32] As alluded to earlier, the applicant's position is that the KL Syariah Court orders are illegal and unlawful, which make them amenable to judicial review. The grounds for the purported illegality are as follows:

(a) the KL Syariah Courts do not have jurisdiction over corporate entities such as MAIWP, which was the defendant in the applicant's renunciation case before them. The Federal Court in *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356 (FC) held that the *ratione materiae* jurisdiction of the Syariah Courts was intended only to cover the subject matter of personal laws which would by their nature only apply to natural persons;

(b) the KL Syariah Courts do not have the power to interpret the Federal Constitution. Learned counsel contended that the KL Syariah Appeal Court, in its grounds of judgment in affirming the decision of the KL Syariah High Court, had touched on the interpretation of the Federal Constitution. The impugned part of the grounds can be seen in para [19], where the KL Syariah Appeal Court held as follows:

> Berdasarkan kedua-dua otoriti kes di atas, kami berpandangan bahawa Perkara 11 PP [Perlembagaan Persekutuan] memberi suatu jaminan kebebasan kepada rakyat supaya mengamalkan agama yang dianutinya.
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> Relying on the judgment of the Federal Court in *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors* [2018] 1 MLJ 545; [2018] 3 CLJ

145 (FC). The Federal Court held that if a matter involves constitutional issues or interpretation of the law, then the civil courts would be seized with jurisdiction to determine the issue, regardless of its subject matter and especially if it comes within the scope and ambit of judicial powers outlined above. By attempting to interpret the constitutional provision, learned counsel submitted that the KL Syariah Appeal Court had usurped the Civil Court's powers.

(c) the Syariah Court orders were contrary to ss 17, 78 and other relevant provisions of EA 1997. Learned counsel submitted that the KL Syariah Courts had erred in holding the affirmation of the applicant he no longer professed the religion of Islam was insufficient to prove the renunciation as it did not carry probative value. In short, the KL Syariah Courts insisted that the applicant had to bring witnesses to corroborate his affirmation. Learned counsel further argued that the finding went against s 17 of the EA 1997, which recognises *iqrar* or admission as a form of evidence. In any event, s 78 provides that 'when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him'; and

(d) the KL Syariah Court orders in allowing the MAIWP's counterclaim and compelling the applicant to attend akidah counselling is void as it violates arts 5, 8, 11 and 12(3) of the Federal Constitution.

ANALYSIS

[33] Let me begin by responding to the argument of the learned senior federal counsel, to whom learned counsel for MAIWP deferred that the decisions of the Syariah Courts are not reviewable by the civil courts. In essence, the learned SFC relied on art 121(1A) of the Federal Constitution. In short, the learned SFC submitted that the insertion of art 121(1A) of the Federal Constitution is to stop the practice of aggrieved parties coming to the civil High Courts to review the decisions made by the Syariah Courts; *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara, Malaysia & Anor* [1999] 2 MLJ 241 (FC).

[34] I believe although there are so many contradicting propositions on the interpretation of art 121(1A), we have come to a stage where it is also almost settled, as reiterated by the Federal Court in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545, that the article does not constitute a blanket exclusion of the jurisdiction of Civil Courts whenever a matter relating to Islamic law arises.

[35] However, in the context of the determination of a person who professes the religion of Islam, the Federal Court in *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301 (FC) made a distinction

between cases where one 'no longer professes the religion of Islam' and one who 'never professes the religion of Islam'. According to the Federal Court, only the former, which refers to renunciation cases is justiciable before the Syariah Court; the latter, which necessarily engages the issue of one's identity and legal status, must fall within the jurisdiction of the Civil Court.

[36] In delivering the judgment of the Federal Court, Tengku Maimun Chief Justice observed as follows:

> [88] Summarising the above, one cannot unilaterally on his own accord renounce the religion of Islam. Doing so would amount to an offence against the precepts of Islam. In such an instance, the Syariah Court would have both jurisdictions *ratione personae* and *ratione materiae.* This has long been canvassed and explained by the Federal Court in *Kamariah Ali & Yg Lain Iwn Kerajaan Negeri Kelantan & 1 Lagi* [2004] 3 CLJ 409 FC; [2005] 1 MLJ 197.
>
> [89] The High Court and the Court of Appeal are therefore correct in principle. If the plaintiff is a Muslim seeking to renounce her faith in Islam, then the matter being 'an offence against the precepts' of Islam, is within the jurisdiction of the Syariah Court due to art 121(1A) of the FC. The Court of Appeal further confirmed this by following this court's decision in *Una Joy (supra).*

[37] Applying the proposition, the applicant, in his affidavit in support, affirmed that he had converted to Islam solely to marry his former wife so that they could live together as husband and wife. In short, the applicant did not deny that he had professed the religion of Islam. He only seeks to renounce it since he no longer professes the religion.

[38] The applicant therefore comes within the ambit of 'no longer professes the religion of Islam' instead of one who 'never professes the religion of Islam'.

[39] The Court of Appeal, in the recent case of *Majlis Agama Islam Selangor v Dahlia Dhaima bt Abdullah and another appeal* [2023] 2 MLJ 897; [2023] 2 CLJ 513 (CA) by a majority, was of the view that in cases where the Syariah Court had already made the determination that an applicant is a Muslim, like in the instant case, the distinction drawn in *Rosliza* must necessarily be construed and answered as a renunciation case. It was irrelevant whether the application filed at the Syariah Court was stated as one never was a Muslim or one no longer was a Muslim precisely because the Syariah Court had already made the judicial determination that one was a Muslim or was still a Muslim. The civil court clearly had no power of judicial review over the Syariah Court — let alone reverse, depart or in any manner re-litigate or unravel or go behind the decision of the Syariah Court — as this would be tantamount to an infringement of art 121(1A) of the Federal Constitution.

[40] Despite the very persuasive submission on multiple issues of law and constitution raised by Encik Fahri, I have to underline that I am bound by the doctrine of *stare decisis*. This is made clear by the High Court in *S Selvaraja a/l T Singarathevar v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor* [1997] MLJU 476; [1997] 2 CLJ Supp 275. In that case, the learned judge remarked that:

> Under the principle of stare decisis, the court below is bound to follow the decision on a point which constituted a ratio decidendi of a superior court.
>
> And, such *ratio decidendi* is binding upon the court below:
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> (i) if it is expressed in a written judgment, published or unpublished, of a superior court, which judgment the court below is itself aware of or is cited to by counsel in the proceedings; and
>
> (ii) the ratio decidendi is clear and unequivocal and based on a point necessary to or arising for decision.

[41] This is most unfortunate since I find that the KL Syariah Court orders are wanting. As affirmed by the applicant in his affidavit, his faith lies in Christianity and the concept of the Holy Trinity. He had stated this in his statement of claim at the KL Syariah Court. The KL Syariah Courts found this to be insufficient. The KL Syariah Court of Appeal found as follows:

> Pada hemat kami, dakwaan Perayu tersebut adalah berdasarkan keterangannya sahaja yang tidak disokong oleh mana-mana saksi. Kami juga berpandangan pembuktian dalam isu kepercayaan dan pegangan agama seseorang tetap memerlukan keterangan yang mencukupi bagi menzahirkan kepada kami amalan dan kepercayaan yang menjadi anutan Perayu dalam sesuatu agama.

[42] I have, however, my reservations on the line of this argument. A testimony is evidence like any other. This is even more so when s 17 of the EA 1997 made it clear that an *iqrar* is an admission made by a person, in writing or orally or by gesture. It is admissible under the EA 1997 and certainly can be used in evidence. I cannot therefore, and I say this with respect, comprehend what the KL Syariah Court of Appeal meant when it said, 'keterangan yang mencukupi'. It should have explained what is meant by *keterangan yang mencukupi* so as to give a guideline on the nature of sufficient evidence required by the Syariah Court.

[43] Be that as it may, as said by the majority of the Court of Appeal in *Dahlia Dhaima,* this court has no power of judicial review over the Syariah Court — let alone reverse, depart or in any manner re-litigate or unravel or go behind the decisions of the KL Syariah Courts on the issue of renunciation.

[44] The decisions of the KL Syariah Courts on the issue of renunciation are pure and simple non-justiciable by the Civil Courts, notwithstanding the fact

A that such decisions are tainted with *anisminic* error or *Wednesbury* unreasonableness.

[45] This JR application is therefore dismissed with no order as to costs.

B *Judicial review application dismissed.*

Reported by Ashok Kumar

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